

§ 28A-13-10. Liability of personal representative.

(a) **Property of Estate.** – A personal representative shall be liable for and chargeable in the personal representative's accounts with all of the estate of the decedent which comes into the personal representative's possession at any time, including all the income therefrom; but the personal representative shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without the personal representative's fault. Except for commissions allowable by law, the personal representative shall not be entitled to any profits caused by an increase in values, nor be chargeable with loss by a decrease in value or destruction without the personal representative's fault, of any part of the estate.

(b) **Property Not a Part of Estate.** – A personal representative shall be chargeable in the personal representative's accounts with property not a part of the estate which comes into the personal representative's possession at any time and shall be liable to the persons entitled thereto if:

- (1) The property was received under a duty imposed on the personal representative by law in the capacity of personal representative; or
- (2) The personal representative has commingled such property with the assets of the estate.

(c) **Breach of Duty.** – A personal representative shall be liable and chargeable in the personal representative's accounts for any loss to the estate arising from the personal representative's embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of the personal representative's joint personal representatives which the personal representative could have prevented by the exercise of ordinary care; and for any loss to the estate arising from the personal representative's failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent person would act with the ordinarily reasonable and prudent person's own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. (1973, c. 1329, s. 3; 1975, c. 300, s. 4; 2011-344, s. 4.)